Majlis Peguam v Dato Sri Dr Muhammad Shafee Abdullah

FEDERAL COURT (PUTRAJAYA) — CIVIL APPEAL NO 01(f)-48–08 OF 2015(W)
RAUS SHARIF PCA, SURAYADI, HASAN LAH, AZAHAR MOHAMED FCJJ AND AZIAH ALI JCA
29 JULY 2016

Legal Profession — Professional discipline — Misconduct — Whether solicitor sought to publicise himself and his law firm through two articles in The Star newspaper — Whether interview given by respondent been taken totally out of proportion and context by Bar Council — Whether DC, DB and High Court erred in finding that respondent breached Legal Profession (Publicity) Rules 2001 — Whether information in articles approved information — Whether statements should be read within context of entirety of articles and surrounding circumstances — Costs — Whether respondent should be awarded costs

It was the Bar Council's case that the respondent had publicised himself and his firm of solicitors in a manner that infringed the Legal Profession Act 1976 ('the Act') and the Legal Profession (Publicity) Rules 2001 ('the 2001 Rules'). The Bar Council's complaint against the respondent was based on an interview given by the respondent that appeared in two articles in *The Star* newspaper. The Bar Council claimed that both articles contained statements, which amounted to misconduct under s 94(3)(k) and (o) of the Act and rr 2, 5(1)(b)(vi), 15(2) and 24 of the 2001 Rules. According to the Bar Council references in the first article, to the respondent as 'a high profile lawyer' and 'a top lawyer' whether taken in isolation or together amounted to a breach of r 5(1)(b)(vi) of the 2001 Rules, which expressly prohibited an advocate and solicitor from providing information that would be construed as an inducement for professional means. In relation to the second article in *The Star*, the Bar Council submitted that the respondent had allowed information beyond the scope of 'approved information', as defined under r 2 of the 2001 Rules, to be publicised with regard to his practice and his firm. The respondent argued that the references in the second article as to his expertise in election law and extradition law and mutual assistance in criminal matters could to a large extent fall under 'approved information' under rr 2(m) and 2(g) of the 2001 Rules. The respondent further submitted that mere mention of expertise in any area of the law did not amount to publicity prohibited under r 5 of the 2001 Rules. The disciplinary committee ('DC') which conducted the inquiry into the complaints concluded that the respondent had in his interview with the journalist publicised himself and his firm of solicitors and was thus in breach of the 2001 Rules specifically rr 2, 5(1)(b)(vi), 15(2) and 24, as well as r 48 of the Legal Profession (Practice and Etiquette) Rules 1978. As such, the DC

recommended that a fine of RM5,000 be imposed on the respondent. After due consideration of the complaint and the findings of the DC, the disciplinary board ('the DB') affirmed the order that a fine of RM5,000 be imposed on the respondent. The respondent appealed against the decision of the DB. The High Court judge held that the opinion of the Bar Council was of primary consideration in this case. Consequently, if the Bar Council was of the view that the interview given by the respondent would reasonably give rise to an inference that the respondent was attempting to publicise his practice then it was the respondent's duty to rectify and withdraw such publication once he became aware of it. As such, the High Court dismissed the respondent's appeal. The respondent appealed to the Court of Appeal, which allowed the appeal and reversed the order of the High Court judge. Hence the present appeal.

Held, dismissing the appeal with costs of RM50,000:

(1) The Court of Appeal was correct in finding that the words describing the respondent as 'a high profile lawyer' and 'a top lawyer' in the first article were the journalist's own remarks. These remarks reflected the journalist's personal opinion and this was something which the respondent could not have prevented the journalist from expressing. Further, there did not appear to be any evidence to show that the respondent had solicited the interview or that the respondent had wanted to publicise his practice or his firm. Although the respondent had control over what he was saying during the interview with the journalist, he had no control over the information provided by him, which in turn led to the journalist making such perceived laudatory remarks. The said articles were in the nature of 'featured articles' on the career and lifestyle of the respondent. In this regard, the context of the article must be viewed as a whole and balanced against mere catch phrases, which would all form part of writing skills of the journalist concerned. Based on the evidence it was clear that the interview given by the respondent had been taken totally out of proportion and context by the Bar Council. In the circumstances, the respondent had not publicised himself or his firm of solicitors in a manner that infringed the 2001 Rules (see paras 19–21).

(2) After perusing the impugned second article it was clear that the statements referred to by the Bar Council as statements wherein he sought to publicise himself or his law firm within the meaning of r 5 or r 15 of the 2001 Rules were actually statements that were made in the course of an extensive long interview and in response to questions relating to the criminal justice system and the respondent's preference insofar as work was concerned. Read in that light, the references to his expertise in election law and extradition law and mutual assistance in criminal matters could to a large extent fall under 'approved information' under rr 2(m) and 2(g) of the 2001 Rules. In the circumstances, the High Court, the DB and the DC had failed to appreciate the context in which

the respondent's comments and explanations were made in the second article. Upon looking at the statements in question objectively and in the context of which they were made, it was apparent that there was no publicity and the statements in question were not laudatory. The comments about the respondent's areas of expertise are more in the nature of general comments across the board, ie justified and not misleading. As such, in relation to the second article, the respondent had not breached the 2001 Rules (see paras 25–28).

(3) It was a well settled principle that as a general rule the policy was not to interfere in matters of professional discipline, but to leave matters of discipline to the body entrusted by Parliament to regulate and discipline members of the profession. However, based on the facts and circumstances surrounding this case it was clear that the statements in the impugned articles, which although laudatory themselves did not automatically lead to the conclusion that there had been publicity within the meaning of the 2001 Rules. The statements should be read within the context of the entirety of the articles and surrounding circumstances (see para 29).

(4) Whilst the Bar Council was merely performing its statutory duties, one should not lose sight of the fact that this was a matter of considerable importance, in that, it involved the professional reputation of the respondent. The respondent obviously had incurred costs in protecting his reputation and restoring the same. The 'getting up' involving extensive legal research was evident from the submissions filed before the High Court, the Court of Appeal and this court. Given that this was the first case, which was decided on the issue of publicity within the 2001 Rules, the sum of RM50,000 was found to be fair and reasonable costs (see paras 32–33).

[Bahasa Malaysia summary

Kes Majlis Peguam adalah bahawa responden telah membuat publisiti tentang diri dan firma peguamcara beliau dengan cara yang melanggar Akta Profesion Undang-Undang 1976 ('Akta') dan Kaedah-Kaedah Profesion Undang-undang (Publisiti) 2001 ('Kaedah-Kaedah 2001'). Aduan Majlis Peguam terhadap responden adalah berdasarkan temu bual yang diberikan oleh responden yang disiarkan dalam dua artikel di akhbar *The Star*. Majlis Peguam mendakwa kedua-dua artikel mengandungi kenyataan yang merupakan salah laku di bawah s 94(3)(k) dan (o) Akta dan kk 2, 5(1)(b)(vi), 15(2) dan 24 Kaedah-Kaedah 2001. Menurut rujukan Majlis Peguam dalam artikel pertama kepada responden sebagai 'seorang peguam berprofil tinggi' dan 'seorang peguam terbaik' sama ada diambil secara berasingan atau bersama-sama merupakan pelanggaran k 5(1)(b)(vi) Kaedah-Kaedah 2001, yang dengan jelas melarang seorang peguam bela dan peguamcara daripada menyediakan maklumat yang boleh ditafsirkan sebagai dorongan untuk tujuan

profesional. Berhubung dengan artikel kedua dalam *The Star*, Majlis Peguam berhujah bahawa responden membenarkan maklumat di luar skop 'maklumat yang diluluskan' seperti yang ditakrifkan di bawah k 2 Kaedah-Kaedah 2001, untuk dipublisitikan berhubung amalan beliau dan firmanya. Responden berhujah bahawa rujukan dalam artikel kedua mengenai kepakaran beliau dalam undang-undang pilihan raya dan ekstradisi undang-undang dan bantuan bersama dalam perkara jenayah hampir keseluruhannya terangkum di bawah 'maklumat yang diluluskan' di bawah kk 2(m) dan 2(g) Kaedah-Kaedah 2001. Responden seterusnya berhujah bahawa hanya sebutan mengenai kepakaran dalam apa jua bidang undang-undang tidak terjumlah kepada publisiti yang dilarang di bawah k 5 Kaedah-Kaedah 2001. Jawatankuasa tatatertib ('JT') yang menjalankan siasatan ke atas aduan menyimpulkan bahawa responden telah, dalam wawancara dengan wartawan, menghebahkan diri dan firma peguamcara beliau dan dengan itu melanggar Kaedah-Kaedah 2001 khususnya kk 2, 5(1)(b)(vi), 5(2) dan 24, dan juga k 48 Kaedah-Kaedah Profesion Undang-Undang (Amalan dan Etiket) 1978. Oleh itu, JT mengesyorkan bahawa denda sebanyak RM5000 dikenakan ke atas responden. Selepas menimbangkan dengan sewajarnya aduan dan penemuan JT, lembaga tatatertib ('LT') mengesahkan perintah bahawa denda sebanyak RM5000 akan dikenakan ke atas responden. Responden merayu terhadap keputusan lembaga tatatertib. Hakim Mahkamah Tinggi memutuskan bahawa pendapat Majlis Peguam adalah pertimbangan utama dalam kes ini. Sehubungan dengan itu, sekiranya Majlis Peguam berpendapat bahawa temu bual yang diberikan oleh responden secara munasabah akan menimbulkan kesimpulan bahawa responden cuba untuk menghebahkan amalan beliau, maka adalah menjadi kewajipan responden untuk membetulkan dan menarik balik penerbitan tersebut sebaik sahaja disedarinya. Oleh itu, Mahkamah Tinggi menolak rayuan responden. Responden mengemukakan rayuan ke Mahkamah Rayuan yang membenarkan rayuan dan menerbalikkan perintah hakim Mahkamah Tinggi. Oleh itu rayuan ini dibuat.

Diputuskan, menolak rayuan dengan kos sebanyak RM50,000:

(1) Mahkamah Rayuan bertindak tepat dalam membuat dapatan bahawa kata-kata yang menggambarkan responden sebagai 'seorang peguam berprofil tinggi' dan 'seorang peguam terbaik' dalam artikel pertama adalah kenyataan wartawan itu sendiri. Kenyataan-kenyataan tersebut mencerminkan pendapat peribadi wartawan itu sendiri dan ini bukanlah sesuatu yang responden boleh halang wartawan daripada menyatakan. Selanjutnya, tidak terdapat apa-apa keterangan yang menunjukkan bahawa responden telah meminta temu bual atau bahawa responden mahu untuk menghebahkan amalan atau firma beliau. Walaupun responden mempunyai kawalan ke atas apa yang dikatakannya semasa temu bual dengan wartawan, beliau tidak mempunyai kawalan ke atas maklumat yang diberikan olehnya, yang seterusnya membawa kepada

wartawan yang membuat kenyataan bersifat pujian. Artikel-artikel tersebut bersifat 'artikel paparan' berkenaan kerjaya dan gaya hidup responden. Dalam hal ini, konteks artikel itu perlu dilihat secara menyeluruh dan diseimbangkan terhadap hanya frasa tangkapan, yang membentuk sebahagian daripada kemahiran menulis wartawan berkenaan. Berdasarkan keterangan adalah jelas bahawa temu bual yang diberikan oleh responden telah diperbesar-besarkan dan diambil di luar konteks oleh Majlis Peguam. Dalam keadaan ini, responden tidak membuat publisiti tentang diri atau firma peguamcara beliau dengan cara yang melanggar Kaedah-Kaedah 2001 (lihat perenggan 19–21).

(2) Selepas meneliti artikel kedua yang dipersoalkan adalah jelas bahawa kenyataan yang disebut oleh Majlis Peguam sebagai kenyataan-kenyataan di mana beliau cuba untuk menghebahkan diri beliau atau firma guamannya mengikut maksud k 5 atau k 15 Kaedah-Kaedah 2001 sebenarnya kenyataan-kenyataan yang dibuat dalam perjalanan wawancara panjang yang menyeluruh dan sebagai tindak balas kepada soalan-soalan yang berkaitan dengan sistem keadilan jenayah dan keutamaan responden setakat mana berkenaan kerja. Dibaca dalam konteks tersebut, rujukan kepada kepakaran beliau dalam undang-undang pilihan raya dan undang-undang ekstradisi dan bantuan bersama dalam perkara jenayah hampir keseluruhannya terangkum di bawah 'maklumat yang diluluskan' di bawah kk 2(m) dan 2(g) Kaedah-Kaedah 2001. Dalam keadaan ini, Mahkamah Tinggi, LT dan JT gagal menghargai konteks di mana komen dan penjelasan responden telah dibuat dalam artikel kedua. Selepas melihat kenyataan-kenyataan yang dipersoalkan secara objektif dan dalam konteks di mana kenyataan tersebut dibuat, adalah jelas bahawa tiada publisiti dan kenyataan berkenaan tidak bersifat memuji. Komen-komen mengenai bidang kepakaran responden adalah lebih bersifat komen-komen umum, iaitu wajar dan tidak mengelirukan. Oleh itu, berhubung dengan artikel kedua, responden tidak melanggar Kaedah-Kaedah 2001 (lihat perenggan 25–28).

(3) Prinsip terpakai adalah bahawa sebagai peraturan umum, terdapat dasar tidak mencampuri dalam hal-hal disiplin profesional, tetapi meninggalkan hal-hal disiplin kepada badan yang diamanahkan oleh Parlimen untuk mengawal selia dan mendisiplinkan ahli profesion. Walau bagaimanapun, berdasarkan kepada fakta dan keadaan sekitar kes ini, adalah jelas bahawa kenyataan dalam artikel yang dipersoalkan, meskipun bersifat memuji, tidak secara automatik membawa kepada kesimpulan bahawa terdapat publisiti dalam maksud Kaedah-Kaedah 2001. Kenyataan-kenyataan hendaklah dibaca dalam konteks keseluruhan artikel dan keadaan sekitar (lihat perenggan 29).

(4) Walaupun Majlis Peguam hanya menjalankan tugas statutorinya, kita

tidak harus lupa hakikat bahawa ini adalah suatu perkara yang amat besar, yang melibatkan reputasi profesional responden. Responden jelas telah menanggung kos untuk melindungi dan memulihkan reputasinya. 'Kos' melibatkan penyelidikan undang-undang yang menyeluruh adalah jelas daripada hujahan-hujahan yang difailkan di Mahkamah Tinggi, Mahkamah Rayuan dan mahkamah ini. Disebabkan ini adalah kes yang pertama, yang diputuskan mengenai isu publisiti dalam Kaedah-Kaedah 2001, jumlah RM50,000 didapati merupakan kos adil dan munasabah (lihat perenggan 32–33).]

Notes

For cases on misconduct, see 9 *Mallal's Digest* (5th Ed, 2015) paras 1853–1933.

Cases referred to

A Solicitor, Re [1969] 3 All ER 610, QBD (refd)
A Solicitor (No 2), Re [1923] 93 LJKB 761 (refd)
Gana Muthusamy v LM Ong & Co [1998] 3 MLJ 341; [1998] 2 MLRA 208, CA (refd)
Keith Sellar v Lee Kwang; Tennakoon v Lee Kwang [1980] 2 MLJ 191; [1980] 1 MLRA 461, FC (refd)
Merchant v Law Society of Saskatchewan [2002] 8 WWR 214, CA (refd)

Legislation referred to

Legal Profession Act 1976 ss 94, 94(3), (3)(k), (3)(o), 103E
Legal Profession (Practice and Etiquette) Rules 1978 r 48
Legal Profession (Publicity) Rules 2001 rr 2, 2(m), (g), 5, 5(1)(b)(vi), 15(1)(b), (2), 24

Appeal from: Civil Appeal No W-01–49–01 of 2014 (Court of Appeal, Putrajaya)

Muhammad Shafee Abdullah (Sarah Abishegam, Farhan Shafee, Wee Yeong Kang and Peremanathan Gunasegaran with him) (Shafee & Co) for the appellant.
Arthur Wang Ming Way (Wong Chooi Mey and Nurufarhina with him) (Arthur Wang, Lian & Assoc) for the respondent.

Raus Sharif PCA (delivering judgment of the court):

INTRODUCTION

[1] This is the Bar Council's appeal against the decision of the Court of Appeal dated 23 July 2015, wherein the Court of Appeal reversed the order of the High Court judge. The Court of Appeal found that the respondent, an advocate and solicitor did not breach the Legal Profession (Publicity) Rules

2001. In doing so, the Court of Appeal ordered that the fine of RM5,000 imposed against the respondent by the Bar Council's disciplinary board to be refunded.

[2] We heard the appeal on 9 March 2016 and dismissed the same with costs of RM50,000. We now give our reasons.

FACTS

[3] Briefly, the facts of this case are these. On 23 September 2010, the Bar Council wrote to the disciplinary board complaining that the respondent appears to have breached the Legal Profession (Publicity) Rules 2001 ('the 2001 Rules'). The complaint was based on an interview given by the respondent that appeared in two articles in *The Star* newspaper. The first article entitled 'Counsel Rests His Case' appeared in *The Sunday Star* on 27 September 2009 ('the first article') and the second article entitled 'Within the Letter of the Law' appeared in *The Star Online* on 5 October 2009 ('second article').

[4] The Bar Council's complaint against the respondent was that both articles contained statements which according to the Bar Council amounted to misconduct under s 94(3)(k) and 94(3)(o) of the Legal Profession Act 1976 ('the LPA 1976'), rr 2, 5(1)(b)(vi), 15(2) and 24 of the 2001 Rules, ruling 14.01(2) of the Rules and Rulings of the Bar Council 2007 and r 48 of the Legal Profession (Practice and Etiquette) Rules 1978.

[5] The Bar Council was of the view that the first article contained statements which was tantamount to a breach of the 2001 Rules. Briefly, the complaints were as follows:

(a) the article referred to the respondent as a 'high profile lawyer' and a 'top lawyer'; and

(b) the article stated that 'people had no difficulty finding the Respondent's office (which has no signboard) because of the Respondent's reputation'.

[6] As far as the second article was concerned, the Bar Council's complaint was that it contained several personal statements such as the following:

(a) the cases handled by the respondent eg the *Ayer Molek*'s case;

(b) the judges who conducted the cases handled by the respondent; and

(c) the use of laudatory remarks wherein the respondent stated the following:

(i) 'I can tell you that whenever I am a defence counsel, the AG

Chambers always sends, without doubt, their best team against me. This is true'; and

(ii) 'I am an authority in election law and there are very few of us in this country. I am also one of the world's experts on extradition and mutual assistance cases'.

[7] The disciplinary committee ('DC') which conducted the inquiry into the complaints concluded that the respondent had in his interview with the journalist publicised himself and his firm of solicitors in breach of the 2001 Rules specifically rr 2, 5(1)(b)(vi), 15(2) and 24, r 48 of the Legal Profession (Practice and Etiquette) Rules 1978; and ruling 14.01 of the Rules and Rulings of the Bar Council 2007. The DC recommended that a fine of RM5,000 be imposed on the respondent.

[8] The disciplinary board ('DB') after considering the complaint and findings of the DC affirmed the order that a fine of RM5,000 be imposed on the respondent. The respondent was informed of the decision by the DB by a letter dated 15 October 2012.

[9] The respondent appealed to the High Court against the decision of the DB under s 103E of the LPA 1976. On 10 January 2014 the High Court dismissed the respondent's appeal.

DECISION OF THE HIGH COURT

[10] In dismissing the appeal, the learned High Court judge held that the two articles contained laudatory remarks and statements about the respondent and his firm of solicitors which were beyond the scope of 'approved information' allowed by the 2001 Rules. The learned judge also held that the opinion of the Bar Council under r 15(1)(b) of the 2001 Rules is the primary consideration insofar as it relates to the question as to whether what was said at the interview will reasonably give rise to an inference that the respondent was attempting to publicise his practice. The learned judge further held that it is the respondent's duty under r 24 of the 2001 Rules to rectify and withdraw such publication once he became aware of it. No evidence was led to show that the respondent had taken any action to ensure as such.

DECISION OF THE COURT OF APPEAL

[11] The Court of Appeal in allowing the respondent's appeal held as follows:

(a) the statements must be read in the context of the articles as a whole. In this instance, the words describing the respondent as a top and high

profile lawyer in the first article were the journalist's own remarks; as were the journalist's remarks relating to people finding the respondent's office without any signboard because of the respondent's reputation. The said remarks reflected the journalist's personal opinion. It was something which the respondent could not have prevented the journalist from expressing. There did not appear to be any evidence to show that the respondent solicited the interview or that the respondent wanted to publicise his practice or his firm. In the circumstances, the words in question could not be ascribed to the respondent as being laudatory and in contravention of r 5 of the 2001 Rules;

(b) the two statements in the second article were made with respect to the scope of the journalist's questions. The statements in question were not laudatory remarks within the meaning of r 5 or r 15 of the 2001 Rules. The statements were made in the course of an extensive long interview and in response to questions about the criminal justice system and the respondent's preference insofar as work was concerned. Read in that light, the references to his expertise in election law and extradition law and mutual assistance in criminal matters could to a large extent fall under 'approved information' under rr 2(m) and 2(g) of the 2001 Rules;

(c) the phrase 'in the opinion of the Bar Council' in r 15 of the 2001 Rules should not be construed narrowly. It is primarily for the members of the Bar to decide what amounts to misconduct and this is reflected in the written rules of the legal profession. In this regard, it is for the Bar Council, the DB or DC to interpret the provisions of the rules. The final arbiter on the interpretation of the rules is the court. In interpreting the provisions of the rules, the court will apply the objective test. The court will place itself as far as possible as members of the Bar in order to determine whether there is any breach of the rules;

(d) the fact that the statements are laudatory in itself does not automatically lead to the conclusion that there has been publicity within the meaning of the 2001 Rules. The statements must be read within the context of the entirety of the articles and surrounding circumstances. The other factors which the DC and DB ought to have considered were: (i) the intention of the respondent with respect to the fact of what the journalist had asked in her scope of questioning him; (ii) the intention of the journalist as to the purpose of the interview; and (iii) the general message that came out from reading the articles; and

(e) looking at the statements in question objectively and in the context of which they were made, there was no publicity within the meaning of the 2001 Rules. Accordingly the appellant did not breach the 2001 Rules.

A OUR FINDINGS

[12] The key legal issue arising in this appeal was whether the respondent had publicised himself and his firm of solicitors in a manner that infringes the LPA 1976 and the 2001 Rules.

B

[13] It was the Bar Council's stance that the respondent by publicising himself and his firm of solicitors had committed a misconduct pursuant to s 94(3)(k) and (o) of the LPA. 'Misconduct' is defined under s 94(3) of the LPA 1976 as follows:

C

> (3) For the purposes of this Part, 'misconduct' means conduct or omission to act in Malaysia or elsewhere by an advocate and solicitor in a professional capacity or otherwise which amounts to grave impropriety and includes —
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> (a) conviction of a criminal offence which makes him unfit to be a member of his profession;
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> (b) breach of duty to a court including any failure by him to comply with an undertaking given to a court;
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> (c) dishonest or fraudulent conduct in the discharge of his duties;
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> (d) breach of any rule of practice and etiquette of the profession made by the Bar Council under this Act or otherwise;
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> (e) being adjudicated a bankrupt and being found guilty of any of the acts or omissions mentioned in paragraph *(a), (b), (c), (e), (9, (h), (k) or (1)* of section 33(6) of the Bankruptcy Act 1967;
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> (f) the tendering or giving of any gratification to any person for having procured the employment in any legal business of himself or any other advocate and solicitor;
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> (g) directly or indirectly procuring or attempting to procure the employment of himself or any other advocate and solicitor through or by the instruction of any person to whom any remuneration for obtaining such employment has been given by him or agreed or promised to be so given;
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> (h) accepting employment in any legal business through a tout;
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> (i) allowing any unauthorised person to carry on legal business in his name without his direct and immediate control as principal or without proper supervision;
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> (j) the carrying on by himself, directly or indirectly, of any profession, trade, business or calling which is incompatible with the legal profession or being employed for reward or otherwise in any such profession, trade, business or calling;
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> (k) *the breach of any provision of this Act or of any rules made thereunder or any direction or ruling of the Bar Council;*
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> (l) the disbarment, striking off, suspension or censure in his capacity as a legal

practitioner in any other country or being guilty of conduct which would render him to be punished in any other country;

(m) the charging, in the absence of a written agreement, in respect of professional services rendered to a client, of fees or costs which are grossly excessive in all the circumstances;

(n) gross disregard of his client's interests; and

(o) *being guilty of any conduct which is unbefitting of an advocate and solicitor or which brings or is calculated to bring the legal profession into disrepute.*

[14] Under s 94 of the LPA 1976 the DB can make the following orders upon finding of guilty of an advocate and solicitor for misconduct:

94 Power of Disciplinary Board to strike off the Roll, suspend for misconduct, *etc*.

(1) All advocates and solicitors shall be subject for the purposes of all disciplinary actions to the control of the Disciplinary Board.

(2) Any advocate and solicitor who has been guilty of any misconduct shall be liable to one or more of the following penalties or punishments:

(a) to be struck off the Roll;

(b) to be suspended from practice for any period not exceeding five years;

(c) to be ordered to pay a fine not exceeding fifty thousand ringgit; or

(d) to be reprimanded or censured.

[15] 'Publicize' according to r 2 of the 2001 Rules means to make known to the public through any form of advertisement. Pertinent to note that publicity per se does not amount to a 'misconduct' within the ambit of the LPA 1976. The 2001 Rules permits publicity with conditions that any form of publicity by an advocate and solicitor shall only contain 'approved information'. Rule 2 of the 2001 Rules define the terms 'approved information' and 'publicize' as follows:

'approved information' means any one or more of the following:

(a) the name of the firm;

(b) the address of the firm;

(c) the telecommunication numbers of the firm;

(d) the business hours of the firm;

(e) the year in which the firm or its predecessor in title was established;

(f) the merger or association of that firm with any other firm or law organisation, whether in Malaysia or elsewhere;

(g) historical data or the firm or its predecessor in title;

(h) the designation 'Advocate and Solicitor' or 'Advocates and Solicitors';

(i) the designation 'Commissioner for Oaths' or 'Commissioners for Oaths';

(j) the designation 'Notary Public' or 'Notaries Public';

(k) the designation 'Agent for Trademarks and Patents' or 'Agents for Trademarks and Patents';

(l) the designation 'consultant' or 'consultants';

(m) the area of practice engaged in by the firm or by the Advocate and Solicitor or Advocates and Solicitors practicing in the firm;

(n) the language proficiency of the Advocate and Solicitor or Advocates and Solicitors practicing in the firm;

(o) the name of the Advocate and Solicitor or Advocates and Solicitors practicing in the firm and whether he is a sole proprietor, partner, legal assistant or consultant in the firm;

(p) the year of admission as an advocate and solicitor of the Advocate and Solicitor or Advocates and Solicitors practicing in the firm and whether he has been admitted as a practitioner in another jurisdiction;

(q) the academic and professional qualifications of the Advocate and Solicitor or Advocates and Solicitors practicing in the firm, and any award, decoration, merit, or title conferred upon him or them; and

(r) such other information which has had the prior written approval of the Bar Council;

'publicize' means to make known to the public through any form of advertisement, including an advertisement —

(a) published in any newspaper, journal, magazine, book, booklet, directory or other publication;

(b) contained in any letter, brochure, bulletin, business card, leaflet, nameplate, newsletter, notice, pamphlet, or letterhead or stationery used for professional purposes; or

(c) placed in, stored in or transmitted through any electronic media accessible to the public or to any section of the public.

[16] Rule 5 of the 2001 Rules narrows down the limits of publicity which an advocate and solicitor may indulge. Rule 5 provides as follows:

5 Publicity within Malaysia

(1) An Advocate and Solicitor who publicizes his practice or the practice of his firm within Malaysia —

(b) *shall not in the publicity —*

(iv) *state anything that would be construed as offering any inducement to, or*

imposing any duress, upon any person as a means of obtaining professional business for himself of his firm;

[17] The decorum relating to an interview with the press, radio and television is provided for under r 15 of the 2001 Rules as follows:

15 Interview with press, radio and television.

(1) An Advocate and Solicitor may, at the request of the press, radio, television or other media, consent to be interviewed, whether in his professional or private capacity, but —

(a) The interview shall not be in relation to any matter or be given with such frequency; or

(b) *At the interview nothing must be said or done by him, as will reasonably give rise, in the opinion of the Bar Council, to an inference that he is attempting, through the interview, to publicize his practice or the practice of his firm in a manner inconsistent with these Rules*.

(2) *Where and Advocate and Solicitor is interviewed by the press, radio, television or other media, he shall not allow any information pertaining to himself or his firm, except approved information, to be publicized*.

[18] Premised on the above, it was the Bar Council's stance that references to the respondent as a *high profile lawyer and a top lawyer* in the first article either taken in isolation or together is in breach of r 5(1)(b)(iv) which expressly prohibits an advocate and solicitor from providing information that would be construed as an inducement for professional means. Learned counsel submitted that the respondent, being the subject matter of the interview which led to the writing of the first article, at all times had control over what he was saying when he was answering the questions posed to him by the journalist during the interview. Thus, it was the information provided by him that led to the journalist making such laudatory remarks.

[19] With respect we disagreed with the Bar Council's contention on this issue. In this regard, we agreed with the finding of the Court of Appeal that the words describing the respondent as a *high profile lawyer* and *a top lawyer* in the first article were the journalist's own remarks. We were of the view that the said remarks reflected the journalist's personal opinion. It was something which the respondent could not have prevented the journalist from expressing.

[20] Further, we were of the view that there did not appear to be any evidence to show that the respondent solicited the interview or that the respondent wanted to publicise his practice or his firm. The references made in the first article to 'a high profile lawyer, a top lawyer' and the fact that 'people had no difficulty finding the respondent's office (which has no signboard) because of

the respondent's reputation' were not adjectives used by the respondent to describe himself. These were attributed by the journalist in the way she used her language and her journalistic skills to express certain comments and her observations. In this regard the context of the article must be viewed as a whole and balanced against mere catch phrases which all form part of writing skills of the journalist concerned.

[21] We were of the view that the respondent although at all times had control over what he was saying when he was answering the questions posed to him by the journalist during the interview, he, however, had no control over the information provided by him that led to the journalist making such perceived laudatory remarks. The said articles were in the nature of 'featured articles' on the career and lifestyle of the respondent. On that basis, we agreed with the respondent that it was not a feeble attempt to solicit clients, tout or advertise his services. In our judgment we found that the interview given by the respondent had been taken totally out of proportion and context by the Bar Council. In the circumstances, we were unanimous that the respondent had not publicised himself or his firm of solicitors in a manner that infringed the 2001 Rules.

[22] Now we move on to the second article. To appreciate the context in which the allegations were made against the respondent, we find it necessary to quote the relevant excerpt from the second article which is as follows:

> Q: Sometimes the police does shoddy work and the judge has no choice but to acquit. How do you feel about that?
>
> A: In those cases I have no problem with my conscience because the prosecution just didn't prove it. It is unfortunate and in fact regretful. The criminal justice system can only work well if both sides are equally strong and equally competent.
>
> In an adversarial practice, there are opposing sides and the judge is the referee. If the matter is well projected to the judge, he makes the right decision. But if you find that too often one side is too weak, then there can be a problem getting justice.
>
> *I can tell you that whenever I am the defence counsel, the AG Chambers always sends, without doubt, their best team against me. This is true.*
>
> But I have got no problem with that because I have done the work and it just means I have got to work a lot harder.
>
> Q: You take on cases ranging from murder, corruption, to defending the underworld 'kings'. Do you have a preference?
>
> A: If it is an unusual murder where the facts are so unusual or the personalities involved are interesting that it becomes an interesting case. Similarly with corruption cases, it there are high profile personalities involved and the factual circumstances are so weird, it becomes an interesting case.
>
> I remember long time ago when I was already a high profile prosecutor, the AG Abu Talib asked me to prosecute Sarimah's former husband for being a peeping tom because he kept going into UM with a video camera.

I thought it was an interesting case because of the personalities involved. If you ask me which are my favorite cases, I like those with constitutional dimensions.

All criminal cases have constitutional dimensions. But I do a lot of civil work. People don't know that I do 7 civil work and only 30% is criminal work. The criminal work is reflected back as it gets reported in the press people think 'Oh Shafee does nothing but criminal work'. But it's not true. I do more civil work.

I am authority on election law and there are very few of us in this country. I am also one of the world's experts on extradition and mutual assistance cases.

There are five or six of us in the world including my mentor- QC Colin Nichols (of the Nichols Brothers). I do most of the extradition cases in Malaysia. (Emphasis added.)

[23] The Bar Council took the stand that the above statements which we have lent emphasis to were laudatory in nature. The Bar Council submitted that the respondent had allowed information beyond the scope of 'approved information', as defined under r 2 of the 2001 Rules, to be publicised with regard to his practice and his firm. The said rule expressly prohibits an advocate and solicitor when engaged in an interview with the press, radio or television from divulging information other than the 'approved information'. As such the Bar Council argued that the second article which is a direct publication of statements and remarks made by the respondent were tantamount to a breach of the 2001 Rules.

[24] The respondent took a convergent view and submitted that the two statements must be read in the context of the second article as a whole. He submitted that his references to judges who had presided over his previous cases were given in a neutral and totally non-contemptuous way. According to him the interview was to address certain public perceptions that were wrongly held and generally educational to the general public. In fact the respondent argued that the reference made as to his expertise in election law and extradition law and mutual assistance in criminal matters can to a large extent fall under 'approved information' under rr 2(m) and 2(g) of the 2001 Rules. The respondent further argued that by merely mentioning one is a specialist or has expertise in any area of the law does not amount to publicity prohibited under r 5 of the 2001 Rules. In this regard the respondent referred to numerous instances to support his argument that no action had been taken by the Bar Council against other advocates and solicitors whose practice and firms are being lauded and praised in their newsletters and websites.

[25] We have perused through the impugned article. After doing so we found that the statements in question were made with respect to the scope of the journalist's questions. We were unanimous in our view that the statements in question were not laudatory remarks within the meaning of r 5 or r 15 of the 2001 Rules. The statements were made in the course of an extensive long

interview and in response to questions relating to the criminal justice system and the respondent's preference insofar as work was concerned. Read in that light, the references to his expertise in election law and extradition law and mutual assistance in criminal matters could to a large extent fall under 'approved information' under rr 2(m) and 2(g) of the 2001 Rules.

[26] Thus, for the reasons alluded above, we found with respect that the High Court, the DB and the DC had failed to appreciate the context in which the respondent's comments and explanations were made in the second article were in reply to the specific questions posed by the reporter and by way of explanation to the areas that the respondent was involved in especially in the fields of Election Law, extradition and mutual assistance cases and the fact that it fell within the scope of 'approved information' under rr 2(m) and 2(g) of the 2001 Rules.

[27] In our judgment, looking at the statements in question objectively and in the context of which they were made, we held the view that there was no publicity and the statements in question were not laudatory. The comments about the respondent's areas of expertise are more in the nature of general comments across the board, justified and not misleading.

[28] Further, it is important to bear in mind that the interview was not solicited by the respondent. The complaint against the respondent concerns an interview given to *The Star* newspaper which is to a large extent, a personal account about his career, described by the reporter as 'controversial' in relation to various 'high profile' and 'controversial cases' which he had uncannily won in courts. Looking at the entire context of the article, we found that the information the respondent spoke about did fall within the catch of 'approved information' under the 2001 Rules. Accordingly we were of the view that the respondent did not breach the 2001 Rules.

[29] We were minded of the well settled principle that as a general rule, the policy is not to interfere in matters of professional discipline, but to leave matters of discipline to the body entrusted by Parliament to regulate and discipline members of the profession. All that is required is that the disciplinary body acts fairly in carrying out its duties, and the hearing conducted thoroughly with due deliberation and understanding given to the facts of the complaint. Unless the disciplinary committee in the exercise of its powers can be shown to have erred in principle, or to have overlooked, misconceived, or disregarded some material matter of fact, or to have failed to act judicially, the court ought not interfere, except in the rarest of cases. This principle has been applied consistently by our courts (see cases of *Re A Solicitor (No 2)* [1923] 93 LJKB 761; *Re A Solicitor* [1969] 3 All ER 610; *Keith Sellar v Lee Kwang; Tennakoon v Lee Kwang* [1980] 2 MLJ 191; [1980] 1 MLRA 461; *Gana*

Muthusamy v LM Ong & Co [1998] 3 MLJ 341; [1998] 2 MLRA 208; *Merchant v Law Society of Saskatchewan* [2002] 8 WWR 214). However, based on the facts and circumstances surrounding this case we were of the view that the fact that the statements were laudatory in itself did not automatically lead to the conclusion that there had been publicity within the meaning of the 2001 Rules. The statements must be read within the context of the entirety of the articles and surrounding circumstances.

CONCLUSION

[30] In the final analysis we were of the considered view that looking at the statements in question objectively and in the context they were made, there was no publicity within the meaning of the 2001 Rules. The interview given by the respondent to *The Star* newspaper did not fall within the meaning of 'misconduct' within s 94(3) of the LPA. Thus, we agreed with the decision of the Court of Appeal.

[31] For the reasons aforesaid, we dismissed the appeal with costs.

[32] As for costs, learned counsel representing the Bar Council submitted that no order should be made against the Bar Council as the Bar being a professional body was merely performing its regulatory and statutory duties as prescribed by the law. The respondent on the other hand had prayed for a punitive costs to be awarded against the Bar Council and in the course of his submissions asked for costs to be set at RM300,000.

[33] We had carefully deliberated on the issue of costs. After taking into consideration the surrounding circumstances of this case, we were of the considered view that costs in the amount of RM50,000 would suffice. We took into consideration the reputation and legal career of the respondent over an article published some seven years ago. To state the respondent's predicament in a proverbial sense: 'the sword of the Damocles was hanging on the Respondent's head for the last seven years'. We took into account of the agony the respondent had to undergo for the last seven years to defend the findings made against him by the DC and the DB in subsequently fighting his case in the High Court, the Court of Appeal and finally before this court. Whilst we were minded of the fact that the Bar Council was merely performing its statutory duties, one must not lose sight of the fact that this was a matter of considerable importance in that it involved the professional reputation of the respondent. The respondent obviously had incurred costs in protecting his reputation and restoring the same. The 'getting up' involving extensive legal research was evident from the submissions filed before the High Court, the Court of Appeal and this court. Given that this was the first case which was

A decided on the issue of publicity within the 2001 Rules, we found that the sum of RM50,000 to be fair and reasonable costs.

Appeal dismissed with costs of RM50,000.

B Reported by Kohila Nesan

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